**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO : 16275 of 2004**

Between:

N. Pandu, S/o. Lalya,
R/o. 20-202, Gandhinagar, Deverkonda, Nalgonda District.

..... PETITIONER

AND

1 APSRTC, rep by its Managing Director,

Musheerabad, Hyderabad.
2 APSRTC, Bus Depot, Miryalaguda, Nalgonda District,

rep by its Depot Manager,

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction particularly one in the nature of WRIT OF MANDAMUS declaring the impugned endorsement dated 26-08-2004 made by the 2nd respondent that the petitioner is not entitled for notional increments for the removal period is illegal, arbitray, and contrary to the purport of the award made in I.D.No. 61 of 2000 and consequently direct the respondents to re-fix the pay by adding the national increments for the out of service period i.e. 31-03-99 to 06-01-2003 along with all consequential benefits in the interest of justice.

**Counsel for the Petitioner:MR.V.NARASIMHA GOUD**

**Counsel for the Respondents: MR.V.T.M.PRASAD (S.C.FOR APSRTC)**

The Court at the stage of admission made the following **ORDER**:

The petitioner is working as a Conductor in the respondent-Corporation. He was

removed from service through the order dated 31-03-1999 as a measure of punishment for certain ticket and cash irregularities. When he approached the Labour Court-III, Hyderabad, the Labour Court passed an award on 10-10-2002 directing the respondents-Corporation to reinstate him into service with continuity of service and without back wages by deferring two increments without cumulative effect for a period of two years. In pursuance of the order of the Labour Court, the petitioner was reinstated into service, but the notional increments were not released in his favour for the purpose of fixation of the pay after reinstatement. He made a representation to the second respondent on 26-08-2004 for adding the notional increments to his pay. The second respondent made an endorsement by observing that the petitioner is not eligible for notional increments. The petitioner, therefore, approached this Court seeking to direct the respondents to add the notional increments for out of service period from the date of removal till the date of reinstatement i.e. from 31-03-1999 to 06-01-2003.

It is an undisputed fact that the petitioner was reinstated without back wages, but he was given the benefit of continuity of service for the period from the date of removal till the date of reinstatement. The petitioner, therefore, contends that he is entitled for adding the notional increments for out of service period for the purpose of fixation of pay after his reinstatement.

The learned Counsel for the respondent submitted that the petitioner is not entitled for any notional increments since he was denied the back wages for out of service period.

The learned counsel for the respondent relied on a judgment of a supreme Court in "***A.P.S.R.T.C. AND ANOTHER v. S. NARSA GOUD***"[1] In the case covered by the above decision, the employee was removed from service on the ground of unauthorized absence, therefore the Supreme Court held that the employee is not entitled for increments for the period of his unauthorized absence, unless the same is regularized in accordance with rules.

In the instant case, the employee was removed from service for his misconduct of ticket and cash irregularities; therefore, the facts of the present case are different from the facts covered by the judgment of the Supreme Court mentioned above.

The learned Counsel for the petitioner relied on the judgment of the Supreme Court in "***DEVENDRA PRATAP NARAIN RAI SHARMA v. STATE OF U.P.***"[2] wherein the Supreme Court held as follows:

> "This rule has no application to cases like the present in which the dismissal of a public servant is declared in valid by a civil Court and he is reinstated. This rule undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set-aside in a departmental appeal. But in this case, the order of dismissal was declared in valid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil Court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had been permitted to work."

A Division Bench of this Court in Writ Appeal No.945/2004 through its order dated 22-06-2004 by relying on the above judgment of the Supreme Court held that the workman is entitled for notional increments for out of service period i.e. from the date of removal till the date of reinstatement. Since the present case is similar to the case held by the Division Bench. I have no hesitation to hold that the petitioner is entitled for getting notional increments, which are to be added for the purpose of fixing the pay of the petitioner on his reinstatement.

The Writ Petition is accordingly allowed. The respondents are directed to work out the notional increments of the petitioner for the period from 31-03-1999 to 06-01-2003 and fix the pay of the petitioner by adding the notional increments for the period from the date of reinstatement within two months from the date of receipt of a copy of this order. No order as to costs.

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Dr. G. Yethirajulu, J.

Dt:5th October, 2004.

Note: Copy in three days.

(B/O)

RNS

To

1 The Managing Director,

APSRTC, Musheerabad, Hyderabad.

2 The Depot Manager, APSRTC,

Bus Depot, Miryalaguda, Nalgonda District,

3. Two CD copies.